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November 9, 2005

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: WT Docket Nos. 03-103, 05-42 and 04-435
Notice of *Ex Parte* Presentation**

Dear Ms. Dortch:

This is to inform you that representatives of AirCell, Inc. ("AirCell") participated in *ex parte* meetings on November 8, 2005 to discuss a number of issues in the above-referenced proceedings. Specifically, Bill Gordon, AirCell Vice President for Regulatory Affairs, and I, counsel to AirCell, met with the following FCC staff: John Branscome, Acting Legal Advisor to Commissioner Abernathy; John Giusti, Acting Legal Advisor to Commissioner Copps; Barry Ohlson, Senior Legal Advisor to Commissioner Adelstein; and Cathleen Massey, Kathy Harris, Richard Arsenault, David Furth, Roger Noel, and Zenji Nakazawa, all of the Wireless Telecommunications Bureau ("WTB"). David Martin, counsel to AirCell, also participated in the meeting with WTB staff.

During these meetings, the following issues were discussed (as described below and in the attached hand-out and letter):

- AirCell identified several unnecessary impediments to new ATG deployment in the FCC's current ATG transition plan. Specifically, AirCell argued that the two-year delay between license grant and deployment for the 3 MHz ATG license, as well as the five-year renewal period for the 1 MHz ATG license, will slow deployment of ATG services to the public and may have a chilling effect on the ATG auction.
- AirCell proposed to alleviate these problems by shortening the renewal and migration periods in the ATG transition plan. If adopted, AirCell's proposal would expedite service to the public, create a more competitive ATG market,

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and maximize the prospects for a successful auction. In short, AirCell's proposal will better serve the public interest than the current ATG transition plan.

- AirCell stressed that incumbent users will not be harmed by AirCell's proposal. The shortened renewal and migration periods will provide sufficient time for Airfone to modify equipment on the 3,000 general aviation aircraft, and the vast majority incumbent users are expected to eagerly migrate to new state-of-the-art services as soon as they are available.
- AirCell also referenced its comments filed in the airborne cellular proceeding (WT Docket 04-435), supporting the use of pico cell technology that will enable the airborne use of personal communications devices, particularly for data applications, where the strongest passenger demand exists.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, I am filing this notice electronically in the above-referenced dockets. In addition, I am sending one copy of this notice via e-mail to the FCC representatives listed below. Please contact me directly with any additional questions.

Respectfully submitted,

/s/ Michele C. Farquhar

Michele C. Farquhar
Counsel to AirCell, Inc.

Attachments

cc: Barry Ohlson
John Branscome
John Giusti
Cathleen Massey
Kathy Harris
Richard Arsenault
David Furth
Zenji Nakazawa
Roger Noel

AirCell Talking Points
WT Docket No. 03-103

Problem: The FCC's ATG transition plan creates a serious impediment for new ATG deployment, for the 1 MHz license as well as the 3 MHz license.

- Deployment of the 3 MHz ATG license will be delayed for two full years after license grant – much longer than needed to consolidate incumbent operations in the 1 MHz portion of the band – and it will seriously delay the new ATG licensee's service to the public.
- The 1 MHz license is valuable, but the five-year renewal period creates an even more severe deployment problem for that license.
- The FCC's rules operate as a real roadblock to deployment of new ATG service, as well as competition, and may have a chilling effect on the auction.

Solution: AirCell's transition proposal will expedite ATG service to the public, ensure a more competitive ATG market, and protect a dwindling number of incumbent users.

Proposal: Airfone should vacate the 3 MHz portion of the band within one year of the close of the ATG auction, rather than on the license grant date. Airfone's license renewal should expire on the sooner of Dec. 31, 2007 or when 85% of its existing customer base (as of the effective date of the ATG Reconsideration Order) have discontinued use of the incumbent technology.

- AirCell will be ready to deploy almost immediately after the ATG auction, but the transition rules block that option for either ATG license, and the incumbent has no incentive to speed its transition.
- AirCell is ready to launch service in the ATG band with its inaugural airline in late 2006, and to begin full commercial service by early 2007.
- The growing commercial aviation market is ready for new broadband ATG services – airlines want service, and airborne passengers want service (especially data). This market has been woefully underserved for years now.
- Incumbent users will not be harmed by AirCell's new proposal:
 - One year will be adequate time for Airfone to modify equipment on the 3,000 general aviation aircraft cited in its recent filing. (Most of these customers will not keep or migrate the incumbent service, but will install new broadband ATG service instead.) AirCell is the leading provider of ATG service in the general aviation market, and it is very familiar with the needs and service preferences of these financially secure customers.
 - Most of Airfone's current ATG customers will likely choose to migrate to a state-of-the-art service with a longer lifespan, so there will be extremely few, if any, incumbent users left in the 1 MHz ATG band once broadband ATG options are available.

The Public Interest Will Be Served By AirCell's Proposal. AirCell is not seeking special treatment that will benefit only itself – its transition proposal will benefit ANY new ATG licensee that wins spectrum in the auction, and it will serve the public interest by speeding deployment of ATG service and ensuring a more competitive market.

November 2, 2005

The Honorable Kevin J. Martin
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554



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Re: WT Docket No. 03-103

Dear Chairman Martin:

I am writing to express my concern about the potential outcome of the FCC's pending reconsideration of the Air-to-Ground (ATG) Order (FCC 04-287). Although AirCell, Inc. is pleased that the FCC is moving forward with plans for an ATG auction early next year, we urge you to reconsider the incumbent licensee migration and license renewal periods, which are longer than needed and could seriously threaten and delay delivery of competitive ATG service to the public, as well as impact the competitiveness of the upcoming auction.

AirCell has recently completed several successful trials of its proposed broadband ATG technology, and we hope to compete in the FCC's upcoming ATG spectrum auction. Assuming that the auction occurs around mid-year 2006 and AirCell wins a license, we are prepared to launch ATG service with our inaugural airline by the end of 2006, with full commercial service available by the first quarter of 2007. Commercial airlines and passengers are eagerly awaiting ATG deployment, particularly for Internet connectivity with the ground, and AirCell has been in ongoing discussions with several airlines.

Unfortunately, while AirCell would be ready to launch service by early 2007, the FCC's current rules may preclude that possibility and force consumers to wait for the incumbent provider to move its services from the band, regardless of whether AirCell wins the 3 MHz exclusive license, a 3 MHz shared license, or the 1 MHz license. By giving Airfone a full two years from the date of license grant to consolidate its narrowband operations within the 1 MHz portion of the ATG band, the Commission has effectively delayed service from any other auction winner (except for Airfone) until some time in 2008 – a full year or more beyond AirCell's proposed deployment. Moreover, if AirCell were to win the 1 MHz license, the situation is even more dire, because the ATG Order granted Airfone a five-year license renewal, permitting it to block access to this portion of the band until May 2010.

The public interest will not be served by enabling an incumbent licensee – offering an outdated, little used, monopoly service – to delay competitive offerings from other providers that have paid for the spectrum. To prevent these delays to ATG deployment, AirCell has argued that the FCC should shorten the migration period to six months and the renewal period to two years. This will ensure a more competitive auction than the current rules, which effectively favor the incumbent (regardless of which ATG license is sought), as any new entrant winning a license at auction would be required to make a large upfront capital expenditure for the license, but would then have to wait years before deploying service.

Recently, Airfone has argued that it needs two years to modify equipment on more than 3,000 privately-owned aircraft using the incumbent technology. AirCell does not believe that two full years are required to migrate these customers, nor is a five-year renewal period needed to protect these customers, as competitive options will be available. Nevertheless, AirCell offers a new proposal that will provide Airfone with additional time for its transition and renewal. First, Airfone should be required to vacate the 3 MHz portion of the band within one year of the close of the ATG auction (rather than the license grant date). Second, Airfone's license renewal should expire on the sooner of December 31, 2007, or when 85% of its existing customer base (as of the effective date of the ATG Order on Reconsideration) have discontinued use of the incumbent technology. This revised proposal will protect the dwindling number of legacy customers while ensuring that the introduction of exciting new services in both the 3 MHz and 1 MHz portions of this nationwide spectrum is not delayed merely to preserve Airfone's outdated service, given that most of its current customers will likely choose to migrate to a state-of-the-art service with a longer lifespan.

I urge the Commission to revise its rules for the ATG band to meet the needs of this growing market segment – with more than 600 million commercial aviation enplanements per year and over 8,000 commercial aircraft – rather than cede these consumers to a single provider.

Sincerely,

/s/ Jack W. Blumenstein

Jack W. Blumenstein,
Chairman and Chief Executive Officer

cc: Commissioner Abernathy
Commissioner Copps
Commissioner Adelstein